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Arthur A. Kober CONSTRUCTION COMPANY
9 Union Avenue Bala Cynwyd, PA 19004 215-839-6700

June 19, 2002

Carlyn Winter Prisk (3HS11)
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Section 104(e) Submission
Arthur A. Kober Construction Company
Lower Darby Creek Area Superfund Site

Dear Ms. Winter Prisk:

This letter is submitted in response to the information inquiry letter (the "104(e) Letter") sent to Arthur A. Kober Construction Company ("Kober" or the "Company") eliciting information concerning the Lower Darby Creek Superfund Site (the "Site"). As an initial matter, we have a number of general concerns and objections and we offer this response subject to these concerns and objections:

A. Concerns and Objections

1. Kober objects to the 104(e) Letter to the extent that it asks or demands that we produce information or documents beyond the scope of USEPA's authority under the laws it has cited to support this request and, to the extent the defined terms are defined in a manner broader than they are in CERCLA, we believe the request is overbroad and not authorized by law.

2. Kober has not produced and will not produce information or documents that are subject to a claim of privilege, including, without limitation, a claim of attorney client-privilege, accountant-client privilege or attorney work product. Our responses below assume that such privileged information or documents are non-responsive.

3. Many of the questions are overly broad, vague and ambiguous and we object to the 104(e) Letter on this basis. Our responses below have been developed based on our reasonable interpretation of the questions poses and terms used; our responses have been developed from information reasonably within our possession which appears to be relevant to the Site and issues inquired about.

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4. Kober does not believe USEPA has authority to simply declare, as it has done in the 104(e) Letter, that Kober is obligated in perpetuity to supplement its answers. Such a timeless obligation is arbitrary, capricious and unreasonable as a matter of law and Kober disavows any purported obligation as unreasonable and beyond USEPA's statutory authority.

5. Kober objects to undefined references throughout the 104(e) Letter to terms or phrases such as "the Site", the "properties," "Philadelphia area," the "Landfill" etc., insofar as those terms are undefined and no map or surveyed drawing is provided to identify and described those areas with certainty.

6. Kober's investigations have been limited to its current employees. We have not sought to track down or interview former employees and object to the 104(e) Letter to the extent it would seek to force the Company to do so, or to develop or present information in any particular form or format not maintained by the Company in the ordinary course of its business.

B. Responses.

The following responses are provided to the best of the current knowledge of the Kober personnel identified in response 14 below, neither of whom were employed by the Company in a full time capacity during the relevant time period.

1. Arthur A. Kober Construction Company, 9 Union Avenue, Bala Cynwyd, PA 19004. The Company is a Pennsylvania corporation, incorporated in August 12, 1965 and has as its parent corporation Kober Corporation.

2. Kober is a construction company that performs "tenant" build out construction activities. These services can include building modifications or tenant build outs to existing structures. Until approximately 1991 Kober was a general commercial contractor whose operation included general commercial contracting in addition to building modifications or tenant build outs.

3. Philip Berman, CFO, Kober. 9 Union Avenue, Bala Cynwyd, PA 19004. (215) 839-6700. T. Burke Monaghan, Building Manager, Kober. 9 Union Avenue, Bala Cynwyd, PA 19004. (215) 839-6700.

4. No "waste" documents, in the traditional sense, were generated. The Company would have, in some circumstances and for some jobs, been responsible to manage construction debris associated with its work.

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It is unlikely any documentation would have been generated or retained, and no such documents have been found in Kober's files. On some jobs, there might have been a job roll-off or other container provided by a waste hauling company contracted by the site owner, the general contractor, a tenant, or, possibly Kober. Again, Kober is unaware of any documentation that would have been generated by any such arrangements between the roll-off companies and others. It is possible that Kober might have received or generated an invoice or purchase order for any roll-off it may have ordered, although if it did so, no such records exist at the Company today. Kober does not have any documents in its files related to waste hauling from any construction site for the years 1958 through 1976. In fact, Kober cannot find any documents relating back to that time period. Also, as a general matter, to the best of its current knowledge, the Company did not generate or handle wastes that were hazardous or constituted pollution, as we understand those terms. Kober's "wastes" would have been typical construction materials, such as wood 2x4s, paper, sheet rock, other wood scraps, sheetrock tape, a few bent nails, floor sweepings/sawdust, and the like. Kober does not have any contracts or other contracting documents relating to the management or disposal of wastes generated at any of its jobs during the relevant time period. We are not aware of any permits that may have been applied for or obtained in connection with any job undertaken by the Company during the relevant time period; no such documents exist today in Kober's files.

5. Kober handled customary, generally accepted and widely used construction materials on the projects it undertook or managed during the relevant time period. It did not manufacture or generate hazardous chemicals or substances and did not produce or prepare MSDSs. To the best of our current knowledge, Kober did not perform chemical analyses of the commercial construction materials and supplies it would have purchased or utilized in its construction, construction management or design-build activities during the relevant time period. In all cases, materials Kober purchased for use in such projects would have conformed to job specifications, although, to our knowledge, chemical testing or analysis was never a requirement for demonstration of material suitability during the relevant time period. There are no documents in the Company's possession today that would enable Kober to identify the chemical composition of such materials, but, again, the products used would have been generally available, widely used construction materials, including dimensional lumber, sheet rock, sheet rock tape, nails, screws, spackle, caulk, and the like. Items (a) through (f) are inapplicable, or cannot be answered with any degree of certainty, based on the limited state of the current knowledge of the Company regarding work performed during the relevant time period.

6. See responses 3, 4 and 5 above. Certainly there would have been wastes generated by the construction process but the Company can only speculate about its contents. Most likely it would have included general construction debris such as wood 2x4s, paper, pieces of sheet rock, other wood scraps, sheetrock tape, a few bent nails, and the like.

These materials we imagine, would have been managed in the manner described in responses 3,4 and 5 above, by others, including perhaps a general or subcontractor, the tenant for whom work was being performed, or perhaps the site owner. No documentation exists at the Company today that is responsive to this inquiry. Items (a) through (f) are inapplicable, or cannot be answered with any degree of certainty, based on the limited state of the current knowledge of the Company regarding work performed during the relevant time period.

7. See responses 3,4,5 and 6 above. The Company does not recognize the names of any of the noted third-party waste haulers as entities that were used on jobs undertaken during the relevant time period.

8. Not applicable. See responses 3 through 7. The Company has no documents or current information to indicate that any wastes Kober may have generated during the relevant time period went to any of the referenced landfills and absent proof to the contrary, Kober denies that its wastes went there or, if they did, that they contained hazardous substances for which liability may attach.

9. Not applicable. See responses 3 through 8.

10. No.

11. Kober has found no records from that time period.

12. No.

13. We have no such information/Not applicable.

14. Correspondence regarding this matter should be directed to Philip Berman, who can be reached at the address and telephone number noted in the response to question number 3 above.

15. The Company did not have a formal record retention policy that was followed during the relevant time period. It is believed that documents from the relevant time period were purged or destroyed in the normal course of business and would have been retained for no longer than seven (7) years. The destroyed files would have been accounting records, as well as any paperwork generated during particular jobs.

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C. No Admission Against Interest/Reservation of Rights.

This response is not an admission of liability or fault in connection with the presence of hazardous substances on or about the Site, any environmental condition on or about the Site, or any release or threatened release of any hazardous or polluting substance on or about the Site. By providing this response, Kober is not waiving, and in fact expressly reserves any claims or causes of action it has, now or in the future, in connection with the Site or any persons associated with it or the hazardous substances that may be there. This response is provided pursuant to a statutory directive and the Company must reserve, and does reserve any and all rights, to the fullest extent permitted by law, to object to and oppose its use or production in any manner or proceeding.

Kober will supplement this response if USEPA can provide documents or information that it believes implicate the Company in the disposal of hazardous substances at the Site. As noted above, we are not in possession of any documentation evidencing the disposal of any wastes at the Site by anyone, let alone any wastes containing hazardous substances.

If you have any questions regarding this response, please call me.

Very truly yours,

ARTHUR A. KOBER CONSTRUCTION COMPANY



Philip A. Berman
Chief Financial Officer

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